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Agenda items 12, 23, 35, 40, 79, 80,
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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

QUESTION OF PALESTINE

THE SITUATION IN THE MIDDLE EAST

LAUNCHING OF GLOBAL NEGOTIATIONS ON INTERNATIONAL ECONOMIC CO-OPERATION FOR DEVELOPMENT

DEVELOPMENT AND INTERNATIONAL ECONOMIC CO-OPERATION

UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

INTERNATIONAL CO-OPERATION FOR THE ERADICATION OF POVERTY IN DEVELOPING COUNTRIES

EXTERNAL DEBT CRISIS AND DEVELOPMENT

OPERATIONAL ACTIVITIES FOR DEVELOPMENT

SPECIAL ECONOMIC AND DISASTER RELIEF ASSISTANCE

WORLD SOCIAL SITUATION

INTERNATIONAL ACTION TO COMBAT DRUG ABUSE AND ILLICIT TRAFFICKING

IMPLEMENTATION OF THE COMMITMENTS AND POLICIES FOR INTERNATIONAL DEVELOPMENT CO-OPERATION AGREED UPON IN THE DECLARATION ON INTERNATIONAL ECONOMIC CO-OPERATION, IN PARTICULAR THE REVITALIZATION OF ECONOMIC GROWTH AND DEVELOPMENT OF THE DEVELOPING COUNTRIES

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CEREMONY FOR THE PRESENTATION OF THE DECLARATION AND PLAN OF ACTION ADOPTED BY WORLD LEADERS AT THE WORLD SUMMIT FOR CHILDREN

Letter dated 4 October 1990 from the Permanent Representative of Bolivia to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the declaration of the Ministers for Foreign Affairs of the member States of the Group of 77 adopted on 3 October 1990 on the occasion of their fourteenth annual meeting, held at United Nations Headquarters in New York (see annex).

On behalf of the Group of 77, I would highly appreciate if you would arrange for the present letter and its annex to be circulated as an official document of the General Assembly under agenda items 12, 23, 35, 40, 79, 80, 82, 83, 84, 86, 90, 108, 148 and 151.

(Signed) Ambassador Hugo NAVAJAS-MOGRO
Permanent Representative of Bolivia
to the United Nations
Chairman of the Group of 77
New York

Annex

DECLARATION OF THE MINISTERS FOR FOREIGN AFFAIRS
OF THE GROUP OF 77

1. The Ministers for Foreign Affairs of the Group of 77 held their fourteenth annual meeting on 3 October 1990 in New York.

2. The Ministers were pleased to welcome the unity of both parts of Yemen and wished them success in their new statehood. They also requested the international community to assist the newly united country in the promotion of its socio-economic structures for the prosperity of its people.

3. The Ministers welcomed the independence of Namibia and noted that this would contribute to the emergence of a better climate for peace and security in Southern Africa. The Ministers expressed their satisfaction at the admission of Namibia as the 128th member of the Group of 77.

4. The Ministers reiterated the principles and objectives set forth in the Caracas Declaration adopted in 1989, on the occasion of the twenty-fifth anniversary of the creation of the Group, including the pending recommendations regarding its organizational effectiveness. These principles and objectives remain valid and should be assiduously pursued and implemented.

5. The Ministers emphasized the importance of carrying forward the consensus embodied in the Declaration on international economic co-operation, in particular the revitalization of the economic growth and development of the developing countries, adopted by the Eighteenth Special Session of the General Assembly on 1 May 1990. This agreement constitutes a step toward a renewed North-South dialogue on key areas of international co-operation for development. While recognizing the paramount importance of the political will and commitment of all countries to guarantee the implementation of the Declaration, they stressed that this will require full and effective use of the United Nations system. To this effect, broad-ranging measures, including effective review mechanisms, should be considered at the forty-fifth session of the General Assembly in its consideration of an item entitled "Implementation of the commitments and policies of international development co-operation agreed upon in the Declaration on International Economic Co-operation, in particular the Revitalization of Economic Growth and Development of the Developing Countries", in accordance with resolution 1990/54 adopted by the Economic and Social Council at its second regular session. The Ministers likewise emphasized that all countries should implement the Declaration through national policies and enhanced international cooperation aimed at the reactivation of economic growth and development of developing countries.

6. The Ministers expressed their strong hope that the Declaration and the Plan of Action adopted by the Heads of State or Government at the World Summit for Children on 30 September 1990 would be urgently and fully implemented.

7. The Ministers noted that after seven years of sustained growth in the developed countries and major adjustment efforts in many developing countries, the stagnation and decline in much of the developing world continued in 1989 and the first part of 1990. In this connection, the Ministers underlined the importance of adopting and implementing the International Development Strategy for the Fourth United Nations Development Decade as a primary instrument to overcome the stalemate of the 1980s.

8. The Ministers highlighted the importance of solving social problems in developing countries as a necessary condition for the revitalization of economic growth and development of those countries. They noted that the ultimate goal of economic development is the elimination of all factors which prevent social and economic advancement of all human beings. Therefore, steps should be taken to improve the human condition and to maximize the full potential of all members of the society, including women and youth, in those countries through the implementation of domestic/national and international policies directed towards the eradication of poverty and hunger, improvement in the quality of human resources by promoting education and training, increased employment opportunities and higher labor productivity in both rural and urban areas, higher levels of nutrition and improved health, housing, as well as other social services. The Ministers particularly stressed that measures should be taken to counteract the negative effects of the economic conditions which prevailed during the past decade which had made inevitable in many cases the enforcement of structural adjustment programmes which particularly affected the vulnerable groups of people.

9. The Ministers reiterated the view that although development is primarily a responsibility of the developing countries themselves, in an increasingly interdependent world, it also depends on a favorable international economic environment. They noted that interdependence affects countries differently, that is, in accordance with their capacity and relative impact on the world economy and that it can either reinforce the economic policies for development of the developing countries or counter them and cause their failure. This poses new risks and challenges to new development strategies for developing countries and makes a strong case for international co-operation for development. They further stressed the need for strengthening multilateral macroeconomic surveillance aimed at the correction of major economic and financial imbalances within the world economy. In addition, they emphasized that the increasing

internationalization of the world economy required an equitable and effective mechanism of multilateral macroeconomic policy coordination which should allow for greater participation of developing countries and take into account their needs and concerns.

10. The Ministers took note of the profound economic and political changes taking place in the Eastern European countries and expressed their hope that the dynamic integration of those countries into the world economy will lead to more commercial opportunities and investment flows to developing countries. They emphasized that the new developments in East-West relations should be closely monitored to guard against further marginalization of the developing countries, particularly in trade and transfer of technology or the danger of reduced availability of resources for the development of the developing countries and the erosion of the benefit for debt relief recently secured by some of them. In this regard, the Ministers welcomed the decision taken by the United Nations Economic and Social Council at the initiative of the Group of 77 to convene a Special Ministerial Meeting of the Council in 1991 devoted to "the impact of the recent evolution of East-West relations on the world economy, in particular on economic growth and development of developing countries" to be held in Geneva on 4-5 July 1991. They noted that this event, the first of its kind, deserves careful preparation by the Group of 77 and therefore called upon the developing country members of the Council as well as observers to be represented at this meeting at the ministerial level, to ensure the presentation of the views of the developing countries at the highest level.

11. The Ministers stressed that the Uruguay Round provides a unique opportunity to promote a truly open, credible, dynamic and durable multilateral trading system. Reiterating the need for a successful and balanced outcome of the Round which should promote in particular the developmental aspirations of developing countries, they emphasized that this opportunity must be seized by the international community in order to generate a new consensus, within the United Nations system, on all aspects of international economic co-operation in the field of trade and development. This consensus should promote both benefits for all its Member States and opportunities for a meaningful participation of developing countries in the international economy. Furthermore, they noted that the prevalent movement towards integration of new economic blocs in Europe and elsewhere should be directed towards greater openness of the world markets and should redound to the benefit of all countries. They further stressed that this process should not, in any way, add to the tendency towards unilateralism, bilateralism and other forms of protectionism and discrimination, which already seriously restrict access of exports from developing countries to the

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markets of developed countries, impeding the revitalization of their economic growth and development.

12. The Ministers emphasized that the external indebtedness of developing countries remains a major hindrance to economic growth and development. They further stressed that in order to achieve a broad and durable solution to the debt problem, prompt, innovative and ample measures should be taken to significantly reduce the stock and service of all types of debt of all categories of debtor developing countries and to prevent the proliferation of the problem of indebtedness. Otherwise, the great efforts made so far by the governments of these countries to resume vigorous economic growth and sustained development, and to avoid political instability and social turmoil will prove unfruitful. In this connection, the Ministers reiterated the need for considering the establishment of an advisory committee on debt and development, as well as a possibility of establishing an international debt facility within the multilateral financial institutions.

13. The Ministers emphasized the critical role of concessional external resources for the development of the developing countries. They called upon the developed countries to redouble their efforts to implement their undertakings to attain the agreed international target of devoting 0.7% of gross national product to official development assistance. They also urged the developed countries to enhance the quantity and quality of their aid.

14. The Ministers noted that, in the last decade, the sharp decline in the flow of resources to developing countries, their severe external indebtedness, deterioration in their terms of trade, depressed international commodity prices, and continued protectionism and other trade measures taken by the developed countries, both individually and collectively, have resulted in a substantial net transfer of resources from developing countries. They further noted that this transfer is rapidly increasing and has become the main obstacle to resumed economic growth and development as well as to political stability of developing countries. They stressed that urgent and immediate measures are required to halt and reverse this phenomenon.

15. The Ministers urged developed countries to take concrete actions aimed at improving the access to their markets for items of export interest to developing countries. The Ministers stressed that the trade policy reforms being undertaken by developing countries would be frustrated unless the developed countries took positive structural adjustment measures providing larger export possibilities to developing countries.

16. The Ministers noted the persisting commodity problems caused by the continued deterioration in the terms of trade which had

resulted in further reduction in export earnings of developing countries, and in Africa in particular. The efforts of these countries to diversify the commodity sector need to be supported.

17. The Ministers emphasized the importance of achieving adequate levels of industrialization in developing countries as one of the main ways to assure the reactivation of their economic growth and development. The Ministers also pointed out the necessity of properly assisting the different stages of industrialization in all developing regions, mainly through the strengthening of industrial infra-structures, the modernization of production capabilities, and the improvement of training techniques. At the same time, in selecting patterns of industrialization, the developing countries should take into account the possibilities of generating employment, human resource development and the ability to incorporate new and emerging technologies. In this connection, the Ministers urged that developed countries, as well as international organizations, should support the efforts made by developing countries to improve their levels of industrialization by providing sufficient financial resources, and opening the domestic markets of developed countries to manufactured exports coming from developing countries.

18. The Ministers stressed that the development and enhancement of endogenous capacities of developing countries in the fields of science and technology are crucial for the economic growth and development of those countries. Effective modalities for unimpeded access to and transfer of technology, particularly on concessional and preferential terms, to developing countries must be set up. Multilateral and bilateral cooperation schemes, including joint programmes of research and development, should be strengthened or initiated. The intellectual property rights system should not be used to create further constraints on access to technology and transfer of technology to developing countries. Therefore, any new regime of intellectual property rights should take into account the developmental concerns of developing countries and their increased need to have an unimpeded access to foreign technologies. The Ministers expressed their strong concern over multilateral and unilateral measures adopted by the developed countries that hinder the free flow of technology to the developing countries. Such measures reinforce the restricted access to technology, in particular of the new and emerging ones, and contribute to deepening the gap between industrialized and developing nations. They are contrary to the principles of free trade and inconsistent with the purpose of promoting development in the developing countries and making the world economy more efficient and more competitive.

19. The Ministers reaffirmed their conviction that there is, at present, more than ever before, a pressing need for a global framework of rules and principles aimed at promoting the access

to, diffusion, and transfer of technology at fair and equitable terms and conditions, both at the intergovernmental and inter-enterprise levels. Therefore, the Ministers reiterated their willingness to resume negotiations on an international code of conduct on the transfer of technology and were of the view that the United Nations Conference on an International Code of Conduct on the Transfer of Technology should be reconvened as early as possible.

20. The Ministers reiterated the special importance of food and agriculture in the development of the developing countries. They further noted that food and agricultural production in developing countries should expand to create a basis for more rapid industrialization and diversification of their economic structures, to redress growing imbalances in world production and enable them to become more self-reliant in the production of their basic foodstuffs. The Ministers also stressed that in order to achieve that goal, the main exporting developed countries shall avoid adverse effects on the economies of the developing countries while formulating and implementing their domestic agricultural policies and reverse the disquieting rise in protectionism, including export subsidies, taking into account the need to provide special and differential treatment for developing countries, considering their food security objectives and the need to avoid potentially adverse effects on their countries, specially the net food importing ones.

21. The Ministers stressed that the continued expansion of illicit production, consumption and trafficking of narcotic drugs and psychotropic substances requires the adoption of urgent measures by the international community. Those measures should include drastic reduction and eventual elimination of demand in the main consumer centers accompanied by crop substitution programmes and measures to strengthen international co-operation to facilitate trade flows and creation of expanded opportunities for trade, investment, in order to provide access to international markets for crop substitution products and other goods produced by countries affected by illicit production and processing of narcotic drugs and for further strengthening their international capacity to produce exportable goods. They further stressed that the financial and banking systems should be prevented from money laundering activities of capital flows stemming from illicit traffic in drugs, and effective action must be taken to impede the diversion of raw materials and other specific chemicals to the illegal manufacture of narcotic drugs. They also called for the international community to take into account the problems of transit countries and of those engaged in licit production. In this regard, the Ministers endorsed the Political Declaration and called for the full implementation of the Global Programme of Action adopted by the seventeenth special session of the General Assembly, devoted to the question of international co-operation against illicit production, supply,

demand, trafficking and distribution of narcotic drugs and psychotropic substances.

22. The Ministers reaffirmed their commitment to the strengthening of international co-operation for the protection and enhancement of the environment. Accordingly, the development dimension in its relation to environment should be of high priority. Therefore, a supportive international economic environment for the developing countries is essential. Moreover, development requires co-ordinated efforts in the North and South, in accordance with the capabilities of each country, with a view to promoting better standards of living which are not harmful to the environment. The Ministers noted that, since the main cause of the deterioration of the environment is the unsustainable patterns of production and consumption of developed countries, they have the main responsibility to combat world pollution; therefore, those countries should increase their endeavors in order to help developing countries in their efforts to deal with their own environmental problems, many of which originate from and have strong links to poverty. The Ministers re-emphasized the importance of international co-operation to provide the developing countries with new and additional financial resources, as well as ensured access to, and transfer of environmentally sound technologies on concessional and non-commercial terms without imposing any forms of conditionality. In this context, they stressed that negotiations on any convention, umbrella agreement or instrument on environment should include these provisions from the outset. Under no circumstances, should environmental considerations be used to justify the imposition of any form of restrictions which adversely affect the developing countries. The Ministers stressed that the success of the 1992 United Nations Conference on Environment and Development will depend on the strict and full compliance by the developed countries with the commitments agreed upon on these issues in General Assembly resolution 44/228. The Ministers agreed to convene a preparatory ministerial meeting of the Group of 77 prior to the United Nations Conference on Environment and Development in 1992, as recommended by the Ninth Conference of Heads of State or Government of the Movement of Non-aligned Countries held from 4-7 September 1989.

23. The Ministers reaffirmed the principles of universality, multilateralism, voluntary/grant nature, neutrality, nonconditionality and flexibility in meeting the technical cooperation requirements of developing countries. The Ministers pointed to the importance of meeting increasing resource needs of developing countries in regard to the operational activities for development. The Ministers stressed that the way to achieve this objective is through substantial and urgent increase in real terms of the overall level of resources for operational activities for development of the United Nations system on a continuous, predictable and assured basis, bearing in mind the

special need for providing grant resources to programmes and projects in low-income countries, particularly the LDCs. They emphasized that resources of United Nations system operational activities should be utilized for projects and programmes of developing countries only. They further stressed that the developing countries should assume full responsibility for the execution of projects funded by the United Nations system in order to ensure that they are managed in an integrated manner, to strengthen national capacities and to ensure the long-term sustainability and wide impact of projects in the development process. In this connection, greater flexibility should be allowed the developing countries in their selection of executing entities. Moreover, the Ministers emphasized that the developing countries have the sole responsibility for the programming of operational activities in accordance with their national plans, objectives and strategies for development. In this regard, the Ministers stressed the need for the full implementation of General Assembly resolution 44/211.

24. The Ministers noted that the supply of energy is vital to the acceleration of growth and development of the developing countries. In this connection, the international community should explore ways and means of overcoming the adverse effects of energy price fluctuations on developing countries. The Ministers also stressed the necessity of developing and utilizing new and renewable sources of energy to effectively address the energy problems of all the countries, particularly those of the developing countries, in accordance with the fundamental objective of the Nairobi Programme of Action.

25. The Ministers welcomed the establishment of the secretariat and the Special Fund of the International Decade for Natural Disaster Reduction and called upon member States of the United Nations and member countries to make generous contributions to this Fund, to allow the secretariat to attain the objectives assigned to the Decade.

26. The Ministers reaffirmed the special needs and vulnerabilities of the Least Developed Countries and called for continued and specific attention of the international community, in particular with regard to commitments on ODA, debt reduction and market access. The Ministers expressed their deep concern over the unabated development crisis in the Least Developed Countries. They noted that during the decade of 1980s the most formidable structural handicaps of LDCs combined with unfavourable external constraints to development continued to seriously impede their socio-economic development. In this context, the Ministers took note of the positive outcomes of the Second United Nations Conference on Least Developed Countries held in Paris from 3 to 14 September 1990 which adopted a new programme of action identifying the areas for national efforts and specific international support measures required to help the

LDCs. The Ministers expressed their firm conviction that the international community would continue to pay serious attention to the special needs of the Least Developed Countries fully implementing the commitment undertaken in the new programme of action with regard, among others, to ODA, debt reduction, market access and commodities.

27. The Ministers reiterated the need to address the specific problems and needs of land-locked developing countries, particularly with regard to reducing the costs of their access to and from the sea and world markets, improving the quality, efficiency and reliability of transport facilities, diversifying their economies and increasing financial resources and technical cooperation to promote the above-mentioned activities. In this context, the Ministers stressed the need and importance of co-operation between land-locked and transit developing countries.

28. The Ministers noted that the specific problems of island developing countries and the growing incidence of natural disasters retarded their growth and development and increased their susceptibility to economic impulses from the global economic environment. The need for the international community, particularly the donor countries and the United Nations system to address the specific problems of the island developing countries was therefore emphasized.

29. The Ministers stressed that despite efforts undertaken by developing countries to promote economic and technical co-operation among themselves, the objectives set forth by the Caracas Programme of Action on ECDC needed to be further pursued and accomplished. In this context, they called upon the donor countries as well as United Nations organizations in all their programmes to extend their support to these efforts to strengthen the collective sufficiency of the developing countries.

30. The Ministers expressed their appreciation to the South Commission on the conclusion of its work. The Ministers took note of the report entitled "Challenge to the South" of the South Commission and agreed to bring the report to the attention of the forty-fifth session of the General Assembly.

31. The Ministers noted with grave concern that the Arab territories in Palestine, Syrian Golan and parts of southern Lebanon are still under Israeli occupation which deprives their people of their land and the sovereignty over their natural resources, thus impeding their economic and social development. In this context, the Ministers affirmed the urgent need to see the termination of this occupation.

32. The Ministers called upon the international community to adopt urgent and effective measures in order to eliminate the use of coercive measures, which have been on the rise and have

taken new forms, including blockades, embargoes, and the freezing of assets of developing countries which have not been authorized by the competent organs of the United Nations.

33. The Ministers viewed UNCTAD VIII, to be held in Latin America in 1991, as an important opportunity to agree on policies and measures in the foregoing areas, with the objective of accelerating the growth and development of developing countries and thus contributing to a healthy, secure and equitable world economy. They expressed the hope that UNCTAD VIII would advance understanding, action and co-operation in those areas and also result in a strengthened role for UNCTAD. They looked forward to concerting their efforts towards these ends at their regular ministerial meeting in preparation for the Conference.

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Forty-fifth session
Agenda item 153
IRAQI AGGRESSION AND THE CONTINUED OCCUPATION OF KUWAIT IN FLAGRANT VIOLATION OF THE CHARTER OF THE UNITED NATIONS

SECURITY COUNCIL
Forty-fifth year

Letter dated 5 October 1990 from the Permanent Representative of Yugoslavia to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the text of the statement on the crisis in the Persian Gulf adopted by the Meeting of Ministers of Foreign Affairs and Heads of delegation of Non-Aligned Countries at the forty-fifth session of the General Assembly, held on 4 October in New York (see annex).

I should be grateful if you would have this text circulated as an official document of the General Assembly, under item 153 of the agenda, and of the Security Council.

(Signed) Darko SILOVIC
Ambassador

ANNEX

Statement on the crisis in the Persian Gulf adopted by the Meeting of Ministers for Foreign Affairs and Heads of delegations of Non-Aligned Countries at the forty-fifth session of the General Assembly, issued on 4 October 1990

The Ministers of non-aligned countries devoted special attention to the dangerous situation in the Persian Gulf, brought about by the Iraqi invasion and annexation of Kuwait. They emphasized that these acts are unacceptable, null and void. They demanded the immediate and unconditional withdrawal of Iraq, the restoration of the legitimate government of Kuwait and of its independence, territorial integrity and sovereignty, as well as the release of citizens of third countries detained against their will in Iraq and Kuwait as requested by the Security Council. They also called upon all countries to strictly adhere to the provisions of relevant Security Council resolutions.

They further expressed their profound concern for the safety of Kuwaiti people under occupation and call upon Iraq to allow the International Committee of the Red Cross or a representative of the Secretary-General to visit Kuwait, assess the situation and report thereon.

The Ministers expressed their deepest concern over the increasing danger of further escalation which might lead to a military conflict with unforeseeable consequences for peace and security not only in this region, but in the world at large. They also deeply regretted Iraq's refusal to respond positively to the efforts by several non-aligned countries, including Arab, as well as other countries.

Reiterating their full determination and strict adherence to the implementation of all relevant Security Council resolutions, the Ministers expressed their resolve to make an effort in order to contribute to a peaceful solution of the crisis in the Persian Gulf. To that end, they entrusted Yugoslavia, as Chairman of the Movement, to address this urgent problem of paramount importance and seek a political solution by peaceful means.

In this spirit, and in the fulfilment of their duties based on the principles of the non-aligned policy, they mandate the Chairman to convey to the leaders of Iraq the sentiment of the Movement on this question and express its readiness to lend its good offices to assist in the resolution of the problem between Iraq and Kuwait by peaceful means upon the full implementation by Iraq of Security Council resolutions 660 (1990), 662 (1990) and 664 (1990).

The Ministers also emphasized that the prompt solution of the crisis in the Persian Gulf should contribute to having the international community approach with equal determination and urgency the Arab-Israeli conflict, at the core of which is the problem of Palestine, in order to achieve a just and lasting solution of this long-lasting crisis in the Middle East.

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Agenda items 31, 45 and 56

ZONE OF PEACE AND CO-OPERATION OF THE SOUTH ATLANTIC

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 44/104 CONCERNING THE SIGNATURE AND RATIFICATION OF ADDITIONAL PROTOCOL I OF THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA (TREATY OF TLATELOLCO)

GENERAL AND COMPLETE DISARMAMENT

Letter dated 5 October 1990 from the Permanent Representatives of Argentina and Brazil to the United Nations addressed to the Secretary-General

We have the honour to transmit herewith the text of a joint statement which Argentina and Brazil, as observers at the Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, issued at that Conference, which was recently held at Geneva, from 20 August to 14 September 1990 (see annex).

We would be grateful if you could have the present letter and its annex circulated as a document of the General Assembly under agenda items 31, 45 and 56.

(Signed) Ronaldo Mota SARDENBERG
Ambassador
Permanent Representative of Brazil
to the United Nations

(Signed) Jorge VAZQUEZ
Ambassador
Permanent Representative of
Argentina to the United Nations

ANNEX

Joint statement issued by Argentina and Brazil at the Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, held at Geneva from 20 August to 14 September 1990

Brazil and Argentina reiterate their firm commitment to the peaceful uses of nuclear energy and to the objective of non-proliferation of nuclear weapons in all forms and modalities. This has been constantly reflected in the statements of their highest authorities, in the policies and acts of their Governments and in their strict observance of the relevant national and international legal instruments.

Argentina and Brazil welcome the positive trends in the relationship between the two main nuclear-weapon States and their respective allies, which are making it possible to envisage the adoption of steps towards the slowdown and cessation of the nuclear-arms race and towards nuclear disarmament.

At the same time, Brazil and Argentina would like to stress the fundamental importance of the political will to promote dialogue and understanding among all members of the international community in order to lessen tension and to achieve the peaceful settlement of disputes. In this regard, Argentina and Brazil are proud to point out that the spirit of co-operation has prevailed among the countries of South America for many decades.

It is particularly noteworthy that, for a number of years now, Brazil and Argentina have been actively engaged in a process of political co-operation and economic integration, as attested, among other initiatives, by the co-ordination of their nuclear policies. To date, there have been seven meetings of the Working Group and of the Permanent Bilateral Committee on Nuclear Co-operation, held alternately in each country in order to co-ordinate policies and exchange information on their respective programmes in the nuclear field. One important aspect of these meetings is the visits by high authorities and technical experts to each other's nuclear installations, research centres and other facilities.

The following are examples of areas of ongoing co-operation between the two countries: nuclear safety, mutual assistance in the event of nuclear accidents or radiological emergencies, research reactors fuel, safeguard concepts and methods, fast-breeder reactor project, exchange of information on materials and techniques, industrial co-operation, etc.

This increasing co-operation has also been reflected in the work of the delegations of Argentina and Brazil in multilateral and regional forums, as underscored by their co-ordinated initiatives in the Conference on Disarmament, in the International Atomic Energy Agency and in the Agency for the Prohibition of Nuclear Weapons in Latin America.

Brazil and Argentina remain deeply committed to the principles stated by the international community in General Assembly resolution 2028 (XX), which set forth

the basic tenets of a multilateral treaty to prevent the proliferation of nuclear weapons. Accordingly, Argentina and Brazil respect the letter and the spirit of the Treaty of Tlatelolco. The full implementation of this Treaty is currently the subject of an active and intense exchange of views among interested parties.

Brazil and Argentina are deeply convinced of the value of their individual and joint contributions, in the past as well as in the present, to achieving the goal of preventing the proliferation of nuclear weapons in all its dimensions. In their view, increasing co-operation in the peaceful applications of nuclear energy and the mutual assurances thus generated are the most effective way to attain that goal.

Argentina and Brazil respect the position of those countries which have exercised their sovereign right to accede to international instruments which, in the view of such States, would foster those objectives. Brazil and Argentina expect that their own choice of ways and means to contribute to the same goal will likewise be respected.

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Forty-fifth session
Agenda item 95

NEW INTERNATIONAL HUMANITARIAN ORDER

Humanitarian assistance to victims of natural disasters and similar emergency situations

Report of the Secretary-General

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I. INTRODUCTION

1. In its resolution 43/131 of 8 December 1988, the General Assembly reaffirmed the importance of humanitarian assistance for the victims of natural disasters and similar emergency situations and stressed the important contribution made in providing assistance by intergovernmental and non-governmental organizations working with strictly humanitarian motives. It invited all States in need of such assistance to facilitate the work of those organizations in implementing humanitarian assistance, in particular, the supply of food, medicines and health care. It also called upon all the intergovernmental, governmental and non-governmental organizations dealing with humanitarian assistance to co-operate as closely as possible with the Office of the United Nations Disaster Relief Co-ordinator (UNDRO) or any other ad hoc mechanism set up by the Secretary-General in the co-ordination of aid.

2. In that resolution the General Assembly recognized that humanitarian assistance is a prime responsibility of Governments; the speed and effectiveness, however, of its delivery can be increased with the help of local organizations, notably non-governmental ones. Governments are therefore called upon to support and increase the capacity of those organizations to provide humanitarian assistance. It also called upon the international community to facilitate the flow of relief assistance. This kind of collaboration should, however, not be interpreted as diminishing the prerogatives of a sovereign State. On the contrary, the resolution underlines the primordial role of States in taking the initiative in the organization and co-ordination of humanitarian assistance.

3. In paragraph 8 of the resolution, the General Assembly requested the Secretary-General to seek the views of Governments, intergovernmental, governmental and non-governmental organizations with regard to the possibility of enhancing the effectiveness of international mechanisms and increasing the speed of assistance in the best possible conditions for the victims of disasters and similar emergency situations, where needed, and to report his findings to it at its forty-fifth session.

4. The present report is therefore made in accordance with that resolution. It is based on the result of answers to notes verbales sent by the Secretary-General and on a consultative process in the form of informal meetings and questionnaires with United Nations agencies, donors and recipient Governments and non-governmental organizations.

II. HUMANITARIAN ASSISTANCE IN THE CONTEXT OF THE UNITED NATIONS

5. The belief in the dignity and value of human beings as expressed in the preamble of the Charter of the United Nations is and must be the prime motive for the international community to give humanitarian assistance. The concept of international solidarity so often evoked following major emergencies and understood as a feeling of responsibility towards people in distress equally has its roots in the ethical principles of the Charter. Solidarity in this sense is not charity.

Its essence is spontaneity, as has been so admirably demonstrated in the wake of the events in Romania, the earthquakes in the Islamic Republic of Iran and the Philippines earlier this year, as well as in the recent case of persons displaced in Jordan as a result of the Gulf crisis.

6. If, however, full value is to be gained from assistance so motivated, spontaneity needs to be accompanied by a sensible appreciation of the respective situation and the problems it has created for the people concerned. Practical steps to improve the timeliness and appropriateness of humanitarian assistance are therefore of the essence. Delayed relief is virtually no relief, and unwanted material and personnel assistance is a hindrance rather than a help.

7. Humanitarian relief assistance in the form of material and personnel consignments to victims of natural disasters or other emergencies has for the past quarter of a century played an increasing role in the activities of the United Nations system and the international community at large. It has been provided in the framework of the principles of international law, in particular with respect to the sovereignty of the receiving States and in collaboration with their responsible national authorities. At the same time the provision of disaster relief assistance by the United Nations system has been and will continue to be governed by the same principles which are the cornerstone of the Red Cross movement: impartiality and neutrality. To those essential concepts should be added the elements of speed and relevance already mentioned.

8. When, during the 1960s, the United Nations and the international community became increasingly involved in the provision of disaster relief assistance, the United Nations system itself was not equipped to respond quickly and effectively to this challenge. Nor did the donor elements of the international community dispose of noteworthy co-ordination mechanisms.

9. General Assembly resolution 2816 (XXIV) of 14 December, in which the Assembly called upon the Secretary-General to appoint a Disaster Relief Co-ordinator, brought together the recommendations concerning humanitarian assistance which both the Assembly and the Economic and Social Council had adopted since 1968. This, followed by the strengthening of UNDRO in the mid-1970s, was a significant step forward in improving the capacity of the United Nations system to respond to emergencies.

10. The debates in the Assembly and the Council during those years, focused as they often were on particular major emergency situations, reflected to an increasing extent the concern of the international community about the economic consequences of disasters. Natural disasters and similar emergency situations were recognized as formidable obstacles to the development process in developing countries and particularly so in those which were least developed and most seriously affected.

11. A comprehensive survey of the then identified problems encountered in international relief and a list of recommendations for measures to expedite it was undertaken by the League of Red Cross and Red Crescent Societies (LRCS) and UNDRO in 1976-1977. Both the Economic and Social Council and the General Assembly, as

well as the twenty-third International Conference of the Red Cross considered this survey (A/32/64 and Corr.1). In its resolution 2102 (LXIII) of 3 August 1977, the Council requested the Co-ordinator to continue his efforts and, in co-operation with Governments, United Nations bodies and appropriate intergovernmental organizations and voluntary agencies, and particularly the International Red Cross, to pay special attention to the promotion of measures designed to remove obstacles and to expedite international relief assistance. That resolution was endorsed by the General Assembly in its resolution 32/56 of 8 December 1977. In addition, the International Conference of the Red Cross held in 1977 also endorsed the proposals.

12. In 1981, the Secretary-General presented a report entitled "International efforts to meet humanitarian needs in emergency situations" (E/1981/16) to the Economic and Social Council. This was the first in-depth study of the role of the United Nations system in humanitarian assistance. It analysed the state of disaster preparedness in recipient countries, reviewed the preparations for dealing with emergencies at the agencies' level and inter-agency co-ordination, and discussed technical obstacles in the process of the delivery of international relief assistance. In dealing with the latter subject the report drew heavily on the earlier work done by UNDRO and LRCS in this field. The report concluded that the United Nations system had been able to create within the previous 10 years the basic structures and mechanisms to respond to emergencies. Two years later, in 1983, the report of the Secretary-General entitled "Strengthening the capacity of the United Nations system to respond to natural disasters and other disaster situations" (A/38/202-E/1983/94) underscored this finding. The final chapter of that report presented an analysis of the concept of concerted relief programmes on the basis of on-the-spot assessments and the relation between the time required to come to proper assessments of relief needs and their mobilization. In the report it was noted that food assistance, which quite often is the largest single component of relief operations, also suffered the longest delays between its mobilization and final distribution.

13. At the same time, proposals were made for a draft convention to expedite the delivery of international humanitarian relief (A/39/267/Add.2). However, these proposals were not taken any further after their initial presentation to the Economic and Social Council in 1984.

14. More recently, the designation by the Assembly in its resolution 42/169 of 11 December 1987 of the 1990s as an International Decade for Natural Disaster Reduction has given further impetus and authority to efforts to improve disaster prevention and preparedness for emergencies. Such an improvement would automatically lead to better conditions for the more rapid delivery of assistance to the victims, as well as, hopefully, a reduction in their number.

III. EMERGENCE OF NON-GOVERNMENTAL ORGANIZATIONS AND INTERGOVERNMENTAL ORGANIZATIONS IN THE DELIVERY OF ASSISTANCE

15. Up to the 1980s, most of the assistance provided to disaster stricken areas came, as far as non-United Nations assistance was concerned, from the Red Cross and Red Crescent Societies, as well as from the International Committee of the Red

Cross (ICRC). Since that time, however, given the growing concern of the general public in a large number of countries for the fate of victims of disasters, which was brought home to them by television and other media, non-governmental groups started to get well organized for quick and speedy assistance all over the world. Increased circulation of information about disasters and larger access to transport facilities resulted in the creation or development of organized groups with effective means of assistance, such as Médecins sans frontières, Catholic Relief Services, OXFAM etc. Some Governments encouraged and financed the creation of such groups.

16. The importance and value of the work of non-governmental organizations in disasters and other emergency situations should not be underestimated. During the recent famine situation in the Sudan in 1984 and 1985, 80 per cent of the relief assistance was provided by non-governmental organizations. In the recent emergency in Jordan following the inflow of displaced persons in the country as a result of the Gulf crisis, some specialized non-governmental organizations, like Médecins sans frontières were the first to provide substantive and most needed support to the Government.

17. In the mean time intergovernmental organizations also appeared on the scene. The most notable and visible of them is the European Economic Community (EEC) which, through its emergency services, plays a very important role in virtually all emergencies.

18. As a result of those developments, Governments of countries stricken by natural disasters and other emergency situations found themselves in a situation whereby an increasing number of organizations would come to their help. This presented some advantages but could also be a source of problems, since lack of co-ordination in assistance could eventually result in unnecessary material and personnel assistance.

IV. MAIN ISSUES RELATING TO THE DELIVERY OF ASSISTANCE

19. Humanitarian assistance in the case of natural disasters and other similar emergency situations is primarily the responsibility of the Government of the affected country. By definition, however, when a large disaster strikes, the Government of the stricken country may have to deal with a task that is beyond its own means. Speed and efficiency are of the essence in saving lives and reducing the suffering of those who survive. This is where international organizations and non-governmental organizations can provide quick support and help reduce the size of the disaster. The main issues relating to quick and efficient relief in cases of disasters and other emergencies are summarized below.

A. Assessment of damage and of needs

20. A realistic and professional assessment of the magnitude of the damage after a disaster and an immediate and precise assessment of needs are basic conditions to ensuring an adequate response to the situation. When international assistance is

needed, the reaction of donors is to a considerable extent a function of the credibility of a request, which, for that matter, determines the credibility of the agency presenting it.

21. The lack of specificity in requests has many times hampered the effectiveness of the response of donors and relief agencies. Items commonly needed are available in many different sizes, weights and forms. Clarifications of the precise requirements between staff and headquarters and field representatives are time consuming and, more important, delay the arrival of relief assistance.

B. Dissemination of information

22. Electronic data-processing and communications technology offer means for resolving many problems in achieving effective international disaster response. A useful beginning has been made with the United Nations International Emergency Network and its communication and information data base facilities. Further efforts need to be made to develop it into an operational instrument. The role of technology today could make possible an interactive data base by which to track, in real time, emergency needs, pledges and contributions, outstanding balances and logistics data. That information can then be available simultaneously at multiple decision-making points world wide. Early warning information and preparedness information could be equally accessible prior to and at the onset of a disaster.

23. In this respect mention should also be made of the Principles relating to Remote Sensing of the Earth from Outer Space (General Assembly resolution 41/65 of 3 December 1986, annex) and specifically to principle XI, which among others, stipulates that remote sensing should promote the protection of mankind from natural disasters. It also calls upon States to share information and data on natural or impending natural disasters as promptly as possible with States that are affected or are likely to be affected.

C. Access to disaster areas

24. The question of assessment of damage and needs raises the issue of access to the disaster area. This is an indispensable condition for disaster relief and humanitarian work. Access to an affected area includes naturally the transport and distribution of relief goods. In this context an important initiative of the World Food Council (WFC) should be mentioned. At its fifteenth session, held at Cairo in 1989, WFC members accepted in the Cairo Declaration 1/ the proposal for an international agreement on the safe passage of emergency food aid. The proposal was understood as a contribution to the discussions at international level following, among others, Assembly resolution 43/131. The question of the safe passage of emergency food aid was discussed again at the sixteenth session of WFC, held at Bangkok in May 1990. 2/ In the conclusions the members recommended that the Executive Director of WFC should consult with concerned organizations and institutions on the development of guidelines for effective measures to ensure the passage of emergency food aid and should seek the support of the General Assembly in that respect.

25. Denial of access either to assess the needs of victims of disasters or to distribute relief goods has occured in many situations including civil strife or armed conflict. If it is understandable that security reasons might put some restrictions on access to disaster areas, it remains that humanitarian considerations should always be given the necessary priority. Access to the disaster area is also necessary to ensure appropriate distribution of the assistance given. There should, in any case, be no restriction on the gathering and distribution of information on the disaster and on relief efforts.

26. There is no doubt that the unhampered access to the victims of a disaster remains one of the key issues of humanitarian assistance. The idea of establishing relief corridors for relief and rescue workers to deliver essential relief goods might be further developed. Such corridors or passages would be limited in their existence according to the specific nature of the emergency. They would also be limited in their geographic dimension, that is, they would represent the most direct access route to a disaster scene, and finally their function would be exclusively to facilitate the distribution of emergency assistance such as food and medicines. The establishment of life lines of this kind obviously has to be negotiated with affected countries taking into account the exigencies of their sovereignty.

D. Procurement of relief goods

27. Regulations and procedures governing the purchase of supplies have a direct bearing on the speed of delivery of relief assistance. Non-governmental organizations sometimes have great flexibility in this field. As concerns the United Nations system, since normal United Nations procurement procedures do not lend themselves easily to emergency action, the General Assembly requested the Secretary-General, in its resolution 39/207, to modify the existing procedures to permit, on the part of UNDRO, a timely response to the immediate requirements of disaster-stricken countries. Despite continuous efforts of UNDRO in co-operation with the offices concerned to speed up the purchase process in case of emergency, the situation is still not satisfactory and further thought needs to be given in order to resolve the matter in principle. A case in point was the delegation of financial authority to UNDRO specifically for the present crisis in Iraq and Kuwait, which greatly facilitated speedy action on behalf of displaced persons. The fact that financial authorities normally insist on pledges being actually paid before purchase orders can be made also slows down the process considerably.

28. Some agencies within and outside the United Nations system have virtually abolished or have never required formal tendering processes and achieved very fast response times to emergencies. Donors who have authorized their field representatives to make immediate local purchases, up to a certain limit, have achieved similar results. While local procurement is normally the best arrangement, experience has shown that massive local purchases after disasters tend to raise prices and reduce quality. Borrowing from government stocks, if possible, and diversion of supplies already in transit or in-country for other purposes might offer possibilities to respond rapidly to needs. The establishment of stockpiles at strategic points, such as UNICEF at Copenhagen and UNDRO at Pisa, has been found very useful.

E. Co-ordination of relief activities

29. By definition a disaster is a situation with which a Government has difficulty in coping. To permit a quick and efficient response that will save lives and reduce suffering it is important for all external organizations to assist the Government of the disaster stricken country in organizing the response - not to act so as to create further disorganization. There is need therefore to balance the need for immediate dispatch of relief supplies and professional rescue workers with the necessity to ensure an orderly organization of rescue operations that will avoid duplication of action, wastage of scarce resources and congestion of warehouses. One way to achieve that balance is to provide detailed and immediate information to UNDRO on proposed or current actions. The circulation of such information enables various organizations to focus their action in the fields in which assistance is the most needed. There have been too many cases of total wastage of relief supplies and of resulting delays in providing relief to leave this matter unattended. To this effect UNDRO, in collaboration with Austria, is organizing a workshop for international rescue teams to be held in early 1991.

V. PROPOSALS FOR FURTHER ACTION

30. Numerous factors indicate that the provision of humanitarian assistance following natural disasters and other emergencies is likely to become an increasing element of international relations. Foremost among them is the still uncurbed population growth, the migration from rural areas to urban centres, and the concentration of people and infrastructure in vulnerable locations. In addition, environmental changes such as global warming are expected to have a significant effect on the intensity, frequency and geographical spread of certain types of disaster such as cyclones, tsunamis, floods and droughts.

31. In order to review what can be done to improve the present situation, in March 1989 an informal working group composed of representatives of the United Nations and of non-governmental organizations was convened to find out to what extent the problems of humanitarian assistance identified by UNDRO and LRCS in 1976 still existed. The results of the review by the informal working group are presented in annex I. The working group did not formally adopt any recommendations. Annex II briefly summarizes proposed actions that were considered to go some way towards increasing the speed of delivery of humanitarian assistance. The Secretary-General wishes to draw attention to these two important annexes, which he hopes will provide the necessary guidance of an operational nature to Member States, intergovernmental and non-governmental organizations for their future action.

32. The Secretary-General also wishes to draw attention to four fields of activity that have a direct bearing on the facilitation of humanitarian assistance and its efficiency.

A. Disaster preparedness

33. Disaster preparedness may ensure an efficient and quick response to save lives in cases of disasters. An important step at the national level should be the implementation or strengthening of disaster preparedness measures in recipient countries. There is broad consensus among donors, international and non-governmental organizations that the lack of reliable assessment capacities, information analysis and communication are among the most serious obstacles to the rapid delivery of the right kind and quantities of humanitarian assistance.

34. At the beginning of the International Decade for Natural Disaster Reduction disaster-prone developing countries should thoroughly review their disaster preparedness arrangements. Donor Governments and intergovernmental organizations, mindful of the effectiveness of their humanitarian assistance, should assist recipient countries in this field by technical advice and increased financial support. The importance of preparedness planning in disaster-prone developing countries for a truly effective response to the needs of the victims cannot be overstated. A sound legal basis, a disaster response office with trained personnel, communication equipment and transport are some of the vital components of such preparedness planning. In view of the inevitable financial implications and the well-known constraints reigning in all developing countries the need and obligation for outside assistance in this humanitarian effort, is, as stated above, obvious.

B. Co-ordination and training

35. Independent of the dimension of any disaster or similar emergency situation, co-ordination among the participating relief organizations is of singular importance. The measure for effective co-ordination is the speed with which the right assistance reaches the victims. Since each disaster and emergency has its individual characteristics, effective co-ordination depends on the flexibility of the established mechanisms and on the capacity of the responsible officials to adapt to the situation. Such a capacity is the result of continuous training and detailed analysis of small and major emergencies at the national and international levels. Co-ordination in the disaster-stricken country means the collection of information on relief needs from a wide range of sources, the effort to achieve an agreed assessment of such needs among representatives of the Government and major donors (embassies, United Nations organizations and non-governmental organizations), and concerted arrangements for the prompt and effective distribution of assistance to the disaster victims. At the international level, co-ordination means primarily ensuring concerted action by donors in response to changing needs reported from the disaster area.

36. Humanitarian organizations, international or national, depend for their effectiveness on the quality of their staff, the clarity of the instructions given and the degree of authority accorded to field representatives. With regard to the United Nations system, it is hoped that the United Nations disaster management teams, which, under the guidance of the United Nations resident co-ordinator, are being established or strengthened and whose terms of reference are being jointly

prepared by the United Nations Development Programme (UNDP) and UNDRO, will contribute significantly to the effectiveness of the local co-ordination of humanitarian assistance. At the headquarters level concerted action by United Nations agencies will, it is hoped, be further developed in the light of experience acquired in major disasters over recent years.

37. UNDP and UNDRO have launched a joint training project and are finalizing a disaster management manual that is expected to contribute to strengthening United Nations response to disasters. Particular attention is being paid to ensuring that national development plans pay due attention to disaster mitigation aspects in the framework of the International Decade for Natural Disaster Reduction. Relevant United Nations agencies have been involved in an extensive consultation process concerning both initiatives.

C. Co-ordination at the international level

38. At the international level the activities of participants in relief operations continue to require careful co-ordination. The majority of major donors have established national emergency relief services with interministerial links enabling them to respond within hours. Experience has, however, shown that the action of those services is not always well co-ordinated, causing problems of congestion and putting unnecessary strain on transport and personnel resources in recipient countries. This information is even more true when non-governmental organizations, large and small, are taken into account. Accurate information on the overall emergency situation, on met and unmet needs, which is the essence of co-ordination and the mandated task of UNDRO, remains therefore indispensable.

39. Greater co-ordination of international relief efforts could, among other means, also be achieved by a stronger rationalization of international co-operation. In fact each participating body, whether governmental, intergovernmental or non-governmental, should carry out a self-analysis of its methods of intervention with the objective of improvement, specifically with regard to its linkages with the recipient countries. Concentration of efforts and resources coupled with transparency of methods of intervention are key elements in this process.

40. Information and data in an improved form on the sectorial capacity of United Nations agencies having responsibilities in emergencies must continue to be gathered and made available by UNDRO. Such improved information would provide an overview of the resources and modes of intervention available in agencies for particular types of disaster. In addition it would contribute to the exchange of information of programmes, organizations and legal instruments in the area of international co-operation. The Vienna Conventions of 1986, which codify such co-operation for nuclear and radiological emergencies and which attribute a special role in this respect to the International Atomic Energy Agency, are an illustration of what the direction of the above-mentioned overview could be. Another example is the ongoing effort of the United Nations Environment Programme to establish a network of organs to monitor environmental developments, to prepare national authorities for accidents and to evaluate the needs of countries likely to be affected.

D. Legal instruments

41. The suggestions for the improvement of the speed of delivery of humanitarian assistance, as listed in the two annexes and discussed above, are of a predominately administrative, operational and technical nature. Donors, recipient Governments, intergovernmental and non-governmental organizations have also expressed their opinion on the desirability of new legal instruments in order to overcome the obstacles in the way of humanitarian assistance.

42. The number of already existing instruments is impressive: in the first place the Charter of the United Nations, the Universal Declaration of Human Rights and the Geneva Conventions of the Red Cross to name only the most important. Although as previously stated in a similar context, greater respect for the underlying humanitarian spirit of those fundamental instruments, together with their observance, would have made unnecessary a number of related General Assembly and Economic and Social Council resolutions and beyond doubt would have alleviated the lot of victims of natural disasters and similar emergencies.

43. In this connection mention should also be made of the initiative for a convention on the duty of humanitarian assistance to victims of disasters. It appears that a number of Governments, international and non-governmental organizations consider such a convention as an effective means for improving the delivery of humanitarian assistance. Such a convention should describe the rights and the duties of the parties to it and also incorporate the provisions of other instruments that bear, for example, on the matter of transport of relief goods so that, ideally, all elements for an effective international relief operation would be found in one document.

44. However, a group of important non-governmental organizations has declared itself as not being in favour of such a convention. Their point of view is that all new initiatives in the field of humanitarian assistance should be judged against the ultimate criterion of effectiveness, that is, whether they represent an improvement over the present situation of disaster victims or not. In their opinion a convention would not constitute an improvement. On the contrary, it would risk weakening the progress so far achieved over the years in providing humanitarian assistance. In particular, since it is assumed that the concept of national sovereignty as interpreted by some might reinforce the insistence of Governments on the non-interference in their internal affairs and thus render a convention counterproductive.

45. One could envisage different forms for new legal instruments such as declarations of the rights of victims of disaster to relief and bilateral agreements between donors and recipient countries as well as between recipient countries. With regard to the latter UNDRO has made a proposal concerning land-locked African countries facing sudden natural disasters and other emergencies at the meeting on co-operation between the Organization of African Unity and the United Nations held at Addis Ababa in 1990. Since those countries depend on their neighbours for the rapid delivery of international aid, intergovernmental agreements should simplify and consequently speed up the transit of humanitarian assistance. In this context it is also useful to mention the Declaration for

Mutual Assistance on Natural Disasters of Indonesia, Malaysia, the Philippines, Singapore and Thailand. In view of the serious consequences of natural disasters on the economic and social develcpment of their people, those countries agreed in 1976 to co-operate in the improvement of communications among themselves as regards disaster warning and to exchange experts, information and documents and to co-operate in the distribution of medical and other relief assistance.

46. It has also been suggested that one of the forms of new legal co-operation may be the adoption of a series of bilateral agreements between the United Nations agency (e.g. UNDRO) and the State. The United Nations agency would be the co-ordinating center that would initiate, negotiate and administer such agreements and, in co-operation with States, would implement them. The basis of negotiations would be a model agreement, which would include provisions based on the practical experience and a comparative study of the existing agreements and proposals. The advantage would be a great flexibility, adaptability to the practical requirements and to the particular conditions and the easier realization and implementation of a new legal framework.

47. In conclusion, the Secretary-General believes it might be useful to analyse the existing legal instruments and resolutions on humanitarian assistance in conjunction with a colloquim on the overall aspect of harmonization of international co-operation. Such a gathering, which might be organized by, through or in co-operation with UNDRO, should bring together experts on international humanitarian law and disaster relief operations, as well as national administrators and representatives of United Nations agencies and non-governmental organizations. The result of the deliberations could well be expected to provide guidance on the means of making improvements in the area of humanitarian assistance that are practical and acceptable.

Notes

1/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 19 (A/44/19), part one.

2/ Ibid., Forty-fifth Session, Supplement No. 19 (A/45/19).

ANNEX I

Review made by the informal working group on humanitarian assistance*

1. Potential recipient Governments should designate a single national relief authority.

1A. UNDRO had been informed by 151 countries of the names of officials or the titles of departments of government who had been named as national co-ordinators or who would act in that capacity in case of need; 32 of those countries would normally be regarded as donors, and of these, 18 had emergency duty systems operative outside normal working hours.

2. Potential recipient Governments should waive requirements for consular certificates and invoices (provided adequate documentation from relief agencies were provided) and corresponding requirements for import/export licenses should also be waived.

2A. Although little progress appeared to have been made in these areas, the requirements for the documents were not, in practice, considered to constitute a major problem. Some delays of up to two weeks in the issue of licenses were however reported.

3. To the extent compatible with minimum standards of hygiene and animal protection, normal requirements for fumigation certificates and restrictions on food imports should be waived where their imposition would impede the admission of essential international relief.

3A. The requirements regarding health and hygiene certificates continued to constitute a major and extremely serious source of delay in the delivery of food assistance. New difficulties had arisen since 1977 as regards the levels of radioactivity permitted in certain types of food and countries impose different standards. It was felt that the FAO standards should be universally acceptable for food delivered as international relief.

3B. A new problem might well occur as the irradiation of food to prolong its shelf life became more widely practised. This question was one which was being studied by WHO, FAO and the IAEA.

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* Participants at the meeting compared the 1977 recommendations of UNDRO and the League of Red Cross and Red Crescent Societies concerning the delivery of international relief assistance (see A/32/64 and Corr.1) with the situation in 1989. The recommendations are presented first (for example, para. 1) and the situation in 1989 is indented (for example, para. 1A).

4. All Governments should waive requirements for transit, entry and exit visas for relief personnel acting in their official capacities as representatives of internationally recognized relief agencies.

4A. The International Conference of the Red Cross had approved a resolution of the Board of Governors on this subject. At least one major non-governmental organization had experienced no difficulty in obtaining the waiver of visas but the potential for delay continued to exist. Many airlines would not carry passengers without visas or other permission to land in the destination country, and did not necessarily recognize the fact that the need for a visa had been waived.

4B. It was regarded as important that waivers should continue to be sought, rather than recommending only that visas should be issued as soon as practicable in cases of emergency.

5. All donors should restrict their relief consignments to those high-priority needs identified by appropriate relief authorities, and efforts should be made to educate donors in the importance of avoiding contributions of non-essential items.

5A. The problems continued to be experienced. One solution was to seek better and more accurate assessment of needs in the disaster country, and allied to this was the need to make more precise the description and specification of the supplies required so that donors did not inadvertently send inappropriate items.

5B. A second solution, applicable particularly where goods were transported by an agency other than the actual donor, would be for the transporting agency to apply much more strictly the "rules of acceptance" appropriate to the situation as it was known.

6. All donors should ensure prompt notification to consignees of impending relief shipments, improve procedures for consigning such shipments, include detailed manifests with each shipment, and seek acknowledgement of receipt from the consignee.

6A. Instances continued to occur in which the distribution of shipments was delayed because of inadequate notification procedures. It was essential that co-ordination should take place not only between donors and consignees but also in-country between the latter, other agencies active in the relief operation, and the national relief authority.

7. Governments of transit and recipient countries should ensure that their customs authorities receive standing instructions to expedite the processing of relief shipments.

7A. This remained a serious problem. It was recommended that, in addition to the procedure outlined in the 1977 recommendation, Governments should exempt relief goods from customs charges of any kind at any stage of their journey and regard them as being "in bond" at a port of transit.

7B. It was also recommended that the instructions to "expedite processing" should be time-limited to allow a maximum of seven days for documentation to be completed.

7C. It was, however, recognized that many delays resulted from incorrect documentation issued by the consignors. It was recognized also that where large consignments had to be transported overland from a port to a land-locked country, considerable damage could be caused to the roads in the country of transit, and that in such a case, external assistance might be needed to repair the roads. The funds necessary ought not to have to be raised by means of imposing taxes on the relief consignments themselves.

8. All Governments should authorize their national airlines to transport relief consignments and personnel free of charge or at minimum rates. Traffic rights limitations should be relaxed where this would facilitate the travel of relief personnel or the carriage of relief supplies.

8A. The national carriers of countries hit by disasters had been helpful in complying with the first part of this recommendation, but transport by other airlines was generally on a "space available" basis and the delays inherent in this procedure had been judged unacceptable especially when co-ordination of the timely arrival of supplies is essential. The concessionary rates offered (usually a maximum 20 per cent discount) did not justify the delays and uncertainties experienced.

8B. No instances were reported in which traffic limitations had been relaxed, but equally no case was cited in which delays had occurred as a result of a failure to do so.

9. All Governments should explore the possibility of according overflight permission and landing rights for aircraft carrying international relief.

9A. It was noted that the matter was covered by the provisions of section d of annex 9 of the Convention on International Civil Aviation, but delays in the granting, or even refusals, of overflight permission, did occur from time to time. Landing rights at the final destination had generally been forthcoming without any difficulty. (Only 1 out of 51 relief flights from the United Nations Supply Depot at Pisa during 1988 was refused landing rights, and this was due to earlier problems experienced by the Government with the carrier concerned.)

9B. Landing fees and handling charges at transit/transhipment airports were still a major problem for and expense to donors, and it was recommended that more generous waivers should be given where government charges at such airports were involved.

9C. In-country operations by aircraft belonging to donors could be facilitated by (i) ensuring that a single government focal point was nominated to authorize flights and the use of communications relating to fight operations and (ii) the authorization of the use of airfields nearest the

scene of operations for aircraft arriving from abroad (i.e. without the necessity for first landing at the capital or other airport with permanent customs facilities).

9D. A major problem experienced concerned the difficulty of arranging flights to what were regarded as "war risk" zones. Where civilian aircraft were concerned, prohibitively large premiums imposed by insurers inevitably limited the geographical areas to which relief could be delivered. This constraint was sometimes less important if military aircraft were being used, but here too, authorization from the Government to fly into such areas might not always be granted, and this refusal acted to the detriment of the disinterested and humanitarian character of the assistance and the relief operation.

10. Potential recipient Governments should take advance measures to authorize access to communications facilities by recognized relief personnel.

10A. The recommendations of the World Administrative Radio Conference of 1979 in this regard appear to have had a beneficial effect. It was felt, however, that further consideration of the text of those recommendations would be most desirable, to take account of the development of new facilities such as telefax and satellite communications.

ANNEX II

Actions for improving the delivery of humanitarian assistance

A. All Governments

1. Governments should waive customs charges on relief goods at every stage of their journey, as well as landing and handling charges for the aircraft carrying them.

2. The World Administration Radio Conference should re-examine the recommendations of 1979 to take account of new developments in communications.

B. All Governments and agencies

3. Greater discretion should be given to field representatives to make immediate local purchases in the wake of a disaster.

C. Potential recipient Governments

4. The FAO standards for the amount of radioactivity present in foodstuffs should be adopted for relief supplies.

5. Governments should permit unfettered access to all areas of a country where relief assistance is required, or is being distributed, for the accredited representatives of donor Governments and recognized relief agencies.

6. Disaster preparedness plans should include a draft form of agreement to facilitate the delivery of international relief.

D. Donor Governments and agencies

7. Field representatives should be encouraged to use standard terms and descriptions for supplies required, and act together to lay down such standard terms.

8. Consideration should be given to the costs incurred by transit countries through damage to roads consequent upon the passage of large quantities of relief supplies to land-locked States, with a view to giving financial assistance to the transit States.

E. United Nations

9. Relaxation of the rules covering purchases of relief supplies should be further examined in the light of General Assembly resolution 39/207.

F. Donor Governments, agencies and the insurance industry

10. War risk insurance premiums for aircraft engaged in relief operations should if possible be reduced to a reasonable level and that the premiums should whenever practicable be paid by donor Governments in the same manner as export guarantee insurance.

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DEVELOPMENT AND INTERNATIONAL ECONOMIC CO-OPERATION: TRADE AND DEVELOPMENT

Negotiations on a draft international code of conduct on the transfer of technology

Report of the Secretary-General of the United Nations Conference on Trade and Development

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I. INTRODUCTION

1. Formal initiatives with a specific reference to the formulation of an international code of conduct on the transfer of technology started in 1972. 1/ However, the main impetus to the negotiations was provided by the General Assembly at its sixth special session in 1974, when it called for the formulation of an international code of conduct on the transfer of technology, corresponding to the needs and conditions prevalent in developing countries (see General Assembly resolution 3202 (S-VI), sect. IV). At its seventh special session, the Assembly adopted by consensus resolution 3362 (S-VII), providing that all States should co-operate in evolving a code of conduct, corresponding, in particular, to the special needs of the developing countries. An intergovernmental group of experts was established by the United Nations Conference on Trade and Development (UNCTAD) for this purpose and held six sessions between November 1976 and 1978. Subsequently, by its resolution 32/188 of 19 December 1977, the General Assembly decided to convene a United Nations Conference on an International Code of Conduct on the Transfer of Technology under the auspices of UNCTAD, to negotiate on the draft elaborated by the expert group, and to take all decisions necessary for its adoption. Since 1978, six sessions of the Conference have been held, the last of which was from 13 May to 5 June 1985.

2. The negotiations so far 2/ have led to a structure of the draft code, consisting of a preamble and the following nine chapters: chapter 1. Definitions and scope of application; chapter 2. Objectives and principles; chapter 3. National regulation of transfer of technology transactions; chapter 4. Restrictive practices; chapter 5. Responsibilities and obligations of parties to transfer of technology transactions; chapter 6. Special treatment for developing countries; chapter 7. International collaboration; chapter 8. International institutional machinery; and chapter 9. Applicable law and settlement of disputes. The substantive provisions of the code may be divided into those addressed to Governments (chaps. 3, 6, 7 and 8); and those addressed to parties (chaps. 4, 5 and 9). Most of the provisions of the draft code have been agreed upon, except for a few issues to be found in chapters 4 and 9.

3. With respect to chapter 4 of the draft code, there is a general understanding that it should consist of a chapeau and a list of specific practices to be avoided by parties to transfer of technology transactions. The drafting of clauses relating to 11 of these practices has been concluded, while the final formulation of three further clauses relating to grant-back provisions, export restrictions and restrictions after the termination of arrangements, remains outstanding. The formulation of the chapeau poses the problem whether, and if so in which way, the following four aspects should be included in the code: (a) the characterization of the practices to be avoided and the circumstances under which they should be avoided; (b) the criteria to be followed by parties or by competent authorities in the determination of whether a practice is restrictive or not for the purpose of the code; (c) the applicability of chapter 4 provisions to the transfer of technology transactions between related parties (affiliated enterprises); and (d) the relationship between the code provisions and applicable national or regional legislation.

4. The text of chapter 9 on applicable law and dispute settlement has not yet been formally drafted. However, the various texts considered during the negotiations consist of provisions dealing with choice of law, conciliation and arbitration. It appears that there is a broad consensus on the formulation of the provisions on conciliation and arbitration, but there are differences in the approaches proposed by regional groups with respect to the provision on the choice of law.

5. The other issues still outstanding are the definition and underlying concept of the term "international transfer of technology transactions" in chapter 1, the scope and duration of confidentiality obligations in chapter 5, the nature of the institutional machinery to be established within UNCTAD to deal with certain provisions relating to the code, and the nature and mandate of the review Conference, in chapter 8. For all these topics, compromise proposals have been submitted that seem to be close to resolving the outstanding questions.

6. Although the above paragraphs summarize the formal position relating to the issues outstanding in the draft code of conduct, the protracted negotiations have resulted in their being influenced by a number of factors in the external environment and have sometimes led to a questioning of some agreed provisions and even the relevance of some others.

II. CONSULTATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT AND THE PRESIDENT OF THE UNITED NATIONS CONFERENCE ON AN INTERNATIONAL CODE OF CONDUCT ON THE TRANSFER OF TECHNOLOGY

7. Since the last session of the Conference, pursuant to General Assembly resolution 40/184 of 17 December 1985, followed by Assembly resolutions 41/166 of 5 December 1986 and 42/172 of 11 December 1987, Assembly decision 43/439 of 20 December 1988, and Assembly resolution 44/216 of 22 December 1989, the Secretary-General of UNCTAD and the President of the United Nations Conference on an International Code of Conduct on the Transfer of Technology have held consultations with regional groups and interested Governments with the objective of delineating the scope of the issues outstanding in the draft code and undertaking a quest for appropriate solutions. Significant efforts have been made by all regional groups and interested Governments to overcome the differences in their respective approaches to the issues outstanding in the code, particularly in chapters 4 and 9. However, despite all efforts, no concrete results enjoying general consensus have so far emerged. 3/

8. As pointed out in the report of the Secretary-General of UNCTAD to the General Assembly at its forty-fourth session (A/44/554), in the context of consultations carried out in 1989, the Secretary-General of UNCTAD, taking into consideration the views expressed by the member States and regional groups participating in the consultations, communicated to the regional groups on 9 February 1989 the way in which the Secretary-General of UNCTAD, in collaboration with the President of the Conference, intended to proceed, including the practical steps to be taken in the framework of these consultations. These steps were as follows:

(a) The secretariat of UNCTAD would prepare a study on the relevance of recent policy and legislative developments in the area of technology to the draft code of conduct, particularly the issues outstanding in the negotiations, and circulate it to Governments for comments;

(b) The Secretary-General of UNCTAD and the President of the Conference would assess the situation, based on the outcome of (a), and with the assistance, where appropriate, of experts in the field of technology, and consider it in their consultations with regional groups and Governments;

(c) The Secretary-General of UNCTAD would then make a report to the General Assembly based on (a) and (b) to enable the Assembly to take appropriate action on the negotiations on the draft code of conduct at its forty-fifth session.

9. General Assembly resolution 44/216 took note of the above-mentioned report (A/44/554) and invited the Secretary-General of UNCTAD to submit to the Assembly at its forty-fifth session a complete report, based on the outcome of consultations, so as to enable the Assembly to take appropriate action on the negotiations on the draft code of conduct. The above-mentioned study by the UNCTAD secretariat has now been completed 4/ and distributed to regional groups. During 1990, the Secretary-General of UNCTAD has continued his consultations with regional groups and interested Governments. At the time of writing the present report, these consultations are still going on and the Secretary-General of UNCTAD expects to supplement the present report with an oral account to the General Assembly of the latest developments.

III. RECENT CHANGES IN THE AREA OF TECHNOLOGY AND THEIR RELEVANCE TO THE DRAFT CODE OF CONDUCT

10. The findings of the study carried out by the UNCTAD secretariat confirm that important changes in the area of technology have occurred since the start of the negotiations on the draft code of conduct. Major technological advances in such fields as informatics, telecommunications, biotechnology and new materials have had or are likely to have a strong influence on the production of goods and services. Such advances have occurred mainly in the developed market-economy countries, resulting in a further widening of the technological gap among countries, particularly between the developed and the developing countries. The resultant research and development gap would need to be compensated for by increased international transfers of technology. However, there has been a growing concentration and collaboration among allied enterprises in developed market-economy countries, which may, to the extent that it excludes enterprises from developing countries, result in a reduction of sources of supply of technology (particularly new technologies) for these countries. It would further reinforce the bargaining power of technology suppliers, thus making it more difficult for technology acquirers, particularly in less technologically advanced countries, to obtain fair and equitable terms in technology transfer transactions. However, these trends should be set against other factors such as the greater incentive to transfer technology provided by higher research and development costs and faster innovation, the increase in the involvement of small and medium-sized enterprises

in international technology transfer and the growing ability of developing country enterprises to engage in such transfers.

11. Technological developments have also given rise to a growing emphasis on stronger protection of intellectual property rights and an increased resort to trade secrecy by technology creators and suppliers. The strategies of developed market-economy enterprises in this respect have often received the support of their Governments, both through national measures to provide stronger protection and through related international initiatives. Indeed, there appears to be a widespread tendency for Governments world wide to grant stronger intellectual property protection. Although the granting of higher standards of protection may be justified on grounds of providing incentives and securing investment returns for technology creators and innovators, other effects which may ensue from it, particularly in respect of international transfer and diffusion of technology, should not be overlooked; such effects would include stronger incentives to maintain import monopolies rather than to work or license the technology locally, higher royalties and more restrictive practices in licensing contracts. On the other hand, given the importance attached by suppliers to the protection régimes of potential recipient countries, there is evidence that stronger protection could lead to greater willingness to transfer technology, particularly new technologies. However, although stronger protection may be considered a necessary condition for greater transfer, particularly of more advanced technologies, it is far from being a sufficient condition, given the importance of several other factors.

12. There has also been a universal trend towards liberalization of controls on restrictive practices in technology transfer transactions. In developed market-economy countries, this has manifested itself, inter alia, in greater reliance upon the doctrine of the rule of reason. In developing countries, there has been a relative shift from concerns relating to the adverse effect of restrictive practices on the quality of technological acquisition and diffusion, to concerns about the perceived "disincentive" effects of controls upon the quantity of technology acquired. There has also been a realization that a "good" contract from the legal and cost point of view does not necessarily ensure proper technology transfer and assimilation. It is possible that stronger protection for technology and the liberalization of controls on restrictive practices will result in the prevalence of more restrictive practices in technology transfer transactions. However, the fact that, in some developing countries, acquiring enterprises have learned to bargain better and now possess more knowledge of the technologies they require might partially help to offset this trend. It would, of course, depend upon the abilities of acquiring firms and the level of development of acquiring countries.

13. The economic and financial problems in many developing countries, the relative decline in technology flows to these countries and the importance attached to new technologies have led to much greater efforts by them to attract and promote technology transfer and foreign investment, which contrast with the greater regulation and control of such activities in the past. The range of new policy approaches adopted include more active search for and co-operation with potential foreign investors and suppliers; more investment incentives; and efforts to provide more advisory services to local enterprises in respect of selection of technologies

and suppliers and negotiation of contracts. This promotional approach has also aimed at encouraging foreign investment and transfer of technology by removing those policy elements perceived as disincentives by foreign partners. There has been a similar extensive liberalization of policies towards foreign investment in the countries of Eastern Europe. The overall policy trend is towards less control over foreign direct investment or over the contractual aspects of technology transfer, and more promotion and co-operation.

14. Indeed, a trend towards more co-operation in technology generation and transfer can be observed in all countries and at all levels. At the governmental level, a large number of bilateral agreements on science and technology, investment and double taxation have been concluded. As indicated above, co-operation among enterprises, especially in developed market economy countries, has also intensified. In technology transfer arrangements, there is now often closer involvement between suppliers and recipients, leading to more linkage of technical services with different channels and forms of transfer, and lesser reliance on arms'-length contractual forms such as vertical licensing or turn-key contracts. There is also more use of joint ventures and collaborative arrangements as channels for technology transfer.

15. The necessity to co-operate closely on technology matters appears to have increased world wide due to the growth in the cost of developing new technology, the difficulties in its appropriation, and the increased complexity of its transfer. Meanwhile, the need for technology transfer to developing countries has also intensified as a result of the widening of the research and development gap between them and developed countries, the resource constraints they face and the increasingly decisive importance of technology in economic development and international trade. Moreover, the recent international initiatives for strengthening the world-wide protection of intellectual property rights, in order to enable technology creators to better appropriate the fruits of their investment, have increased the immediate relevance and need for corresponding international action on the "dynamic" aspects of such appropriation, so as to facilitate the transfer and diffusion of proprietary technology in the wider interests of both suppliers and potential recipients. Such action would entail the elaboration of international rules and principles aimed at promoting co-operation, both at the governmental and enterprise levels, in the diffusion and transfer of technology. A universally applicable framework of rules and principles would not only bring about a more balanced approach to international technological co-operation, making it easier for technology acquiring countries to accept the granting of higher standards of protection, but would also enhance the predictability and transparency needed for the free flow of technology among nations, thus benefiting not only technology recipients but also technology suppliers. It would also be indicative of a willingness not to exclude the interests of any group of States in the context of efforts to establish universally applicable norms and standards in the area of technology.

16. As an attempt to elaborate a framework of rules and principles aimed at promoting international co-operation in the area of technology, the negotiations on an international code of conduct on the transfer of technology do not appear to have lost their intrinsic value to the international community. However, although

the basic concerns that inspired the structure and coverage of the draft code may still exist, the code negotiations would also need to take fully into account the needs and concerns which have emerged in recent years, and to reflect the important policy shifts which have taken place both in developed and developing countries with respect to foreign investment, competition law, intellectual property protection and technology transfer. These include the pressures towards stronger intellectual property protection, the growing technological collaboration among enterprises and between enterprises and Governments to promote technological innovation, the increasing emphasis in government policies on attracting foreign investment and promoting technology transfers, the relaxation of controls on restrictive practices, the protection régimes and licensing practices relating to new technologies, the increased concerns about the effects of technology upon the environment, health or safety, and the growing accent on advisory services and assistance to local enterprises to ensure better selection and absorption of technologies. There is also a need for a wider scope for participation of developing country enterprises in technological co-operative schemes and in joint ventures on research and development. The taking into account of such changes may involve a relative shift in emphasis from the "control" approach, on which the code of conduct was to be based at the inception of the negotiations, to a "co-operative" approach capable of facilitating the flow of technology among nations, although there continues to be a need for both approaches in the code.

17. The protracted negotiations on the code have seen an evolution in the positions of all regional groups in respect of the scope and contents of the code provisions. However, the need to strike a proper balance between private party autonomy and public interest has proved a major stumbling block throughout the negotiations in various parts of the text of the code, particularly chapters 4 and 9. This was mainly owing to the divergent conceptual approaches with respect to technology transfer agreements adopted by different regional groups. Recent policy and legislative developments in many countries might, however, contribute to a narrowing of the gap in conceptual approaches. Other elements susceptible of reconciling similar past differences might also be found among the legislative and policy developments which have occurred, as well as from the broader changes in respect of international economic relations. All of them will need to be properly utilized to bring the code negotiations in line with the present realities on international technology transfers, so as to facilitate the achievement of a common understanding of the rules and principles that should serve as a basis for international co-operation in this domain.

18. The above-mentioned secretariat study 4/ was considered by a number of experts invited by the Secretary-General of UNCTAD to provide advice in their personal capacity on the nature and consequences of recent changes in the area of technology and their relevance to the code negotiations, and to suggest appropriate solutions to the issues outstanding, as well as any other possible ways of advancing the negotiations. The experts met at Geneva from 3 to 6 September 1990 and delivered a report to the Secretary-General of UNCTAD at the end of their meeting. The experts reaffirmed the continued relevance and utility of an international code of conduct on the transfer of technology. They were of the view that, in order to achieve conclusive results on the code negotiations, it was necessary to adapt the draft code of conduct to the important changes and developments that have occurred in

recent years in the area of technology. To this end, they have suggested some specific ideas and approaches that could be considered by Governments in any future action on the code negotiations. Concrete recommendations were also made in respect of the unresolved issues in the draft code of conduct. Relevant extracts from the experts' report to the Secretary-General of UNCTAD are set out in the annex to the present report.

IV. SUGGESTIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT FOR FURTHER ACTION ON THE CODE NEGOTIATIONS

19. As noted above, the Secretary-General of UNCTAD is continuing consultations with regional groups and Governments regarding further action relating to the negotiations, using as a basis the findings and conclusions of the UNCTAD secretariat study, and the observations made by the experts. The Secretary-General will orally inform the General Assembly at its forty-fifth session of the outcome of these consultations.

Notes

1/ See resolution 33 (III) adopted at the third session of the United Nations Conference on Trade and Development in 1972.

2/ See UNCTAD document "Draft International Code of Conduct on the Transfer of Technology" (TD/CODE TOT/47).

3/ See the reports of the Secretary-General of the United Nations Conference on Trade and Development (TD/CODE TOT/50, TD/CODE TOT/51 and TD/CODE TOT/53).

4/ See UNCTAD document "The relevance of recent developments in the area of technology to the negotiations on the draft International Code of Conduct on the Transfer of Technology" (TD/CODE TOT/55) to be published shortly.

ANNEX

Extracts from the report to the Secretary-General of the United Nations Conference on Trade and Development of the informal expert group meeting on the draft international code of conduct on the transfer of technology

1. The study by the UNCTAD secretariat of recent developments in the area of technology and their relevance for the negotiations on an international code of conduct on the transfer of technology is a very useful review of the many changes that have occurred in the field of transfer of technology in recent years. It notes that major technological advances have occurred in such fields as informatics, telecommunications, biotechnology and new materials, and have had or are likely to have a strong influence on the production of goods and services. Such advances have occurred mainly in the developed market-economy countries, resulting in a further widening of the technological gap among countries, particularly between the developed and the developing countries.

2. Technological developments have also given rise to new methods of intellectual property protection, as well as to new practices in technology transfer arrangements. The strategies of developed market-economy enterprises in this respect have often received the support of their Governments, both through national measures to provide stronger protection and through related international initiatives. Indeed, there appears to be a widespread tendency for Governments world wide to grant stronger intellectual property protection. There has also been a universal trend towards liberalization of controls on restrictive practices in technology transfer transactions. In developed market-economy countries, this has manifested itself, inter alia, in greater reliance upon the rule of reason. In developing countries, a relevant factor behind this trend has been a relative shift from concerns relating to the adverse effect of restrictive practices on the quality of technological acquisition and diffusion, to concerns about the perceived "disincentive" effects of controls upon the quantity of technology acquired.

3. The economic and financial problems in many developing countries, the relative decline in technology flows to most of these countries and the importance attached to new technologies have indeed led to much greater efforts by them to attract and promote technology transfer and foreign investment, which contrast with the greater regulation and control of such activities in the past. The range of new policy approaches adopted include more active search for and co-operation with potential foreign investors and suppliers; more investment incentives; and more advisory services to local enterprises in respect of selection of technologies and suppliers and negotiation of contracts. This promotional approach has also aimed at encouraging foreign investment and transfer of technology by removing those policy elements perceived as disincentives by foreign partners. There has been a similar extensive liberalization of policies towards foreign investment in the countries of Eastern Europe. The overall policy trend is towards less control over foreign direct investment or over the contractual aspects of technology transfer and more promotion and co-operation.

4. Indeed, a trend towards more co-operation in technology generation and transfer, motivated by considerations of the increasing cost and complexity of technology, can be observed in all countries and at all levels. At the governmental level, a large number of bilateral agreements on science and technology, investment and double taxation have been concluded. Co-operation among enterprises, especially in developed market economy countries, has also intensified leading, inter alia, to more use of joint ventures and collaborative arrangements as channels for technology transfer.

5. The findings summarized above indicate that recent economic, technological and policy developments have rendered even more relevant concerted international action on the creation of a global framework of norms and standards on the transfer of technology. However, for the negotiations initiated in the 1970s to formulate an international code of conduct on the transfer of technology to serve as such a global framework, the important changes described in the study will have to be taken into account. This is all the more important because, although the code of conduct may still be considered a useful and relevant instrument, the demand for it appears to have weakened during the last few years. Nevertheless, the code could still continue to fulfil a useful function. First, it would serve as a framework for international co-operation in the area of transfer of technology. Secondly, it would provide guidelines for national legislation and for contractual relationships regarding transfer of technology. Thirdly, the adoption of multilaterally-agreed rules on restrictive practices in transfer of technology transactions would help to control abuse of market power, especially in the context of stronger protection of intellectual property rights. It would be particularly useful in view of the fact that national rules relating to competition would not normally apply to behaviour by enterprises that has no effect on the domestic market. Fourthly, it would be of help to developing countries that at present have no competition rules in the field of transfer of technology or similar rules for the control of abusive practices in licensing agreements.

6. Moreover, the relevance of a code of conduct on the transfer of technology has been further enhanced by recent international initiatives in closely related areas, such as those on trade-related aspects of intellectual property rights and on the access to and transfer of environmentally sound technologies to developing countries.

7. In order to adapt the draft code to the important changes and developments that have occurred in recent years, consideration should be given to the following approaches:

(a) In future code negotiations, the mutuality of interests between parties to transfer of technology transactions, as well as Governments, should be stressed;

(b) Although there is need for both "control" and "co-operative" provisions in the code, more emphasis is called for, at the present stage, on co-operation and promotion of technology transfer, which could be manifested by more specific rules on intergovernmental and inter-enterprise co-operation on, inter alia, collaborative research and development schemes or programmes, joint ventures, and the promotion of innovation in the least developed countries. In this context,

specific programmes could be elaborated to enable countries to benefit from international technological co-operation;

(c) The main thrust of the code provisions relating to the conduct of parties should be the control of the abuse of economic power. It should lay down basic principles of competition (anti-trust) in the area of licensing and technology transfer;

(d) It should be clarified that the scope of application of the code would cover new technologies and new forms of technology transactions, such as those relating to biotechnology, computer software and layout-designs of integrated circuits. Illustrations of channels and contractual forms, such as joint ventures that may possibly be used for such transfer of technology, should also be provided;

(e) Both the universal applicability and North-South character of the code should be maintained. Additional support could be given to developing countries to strengthen the bargaining power of their enterprises;

(f) Consideration should be given to the possible extension of the code provisions to cover: (i) environment; (ii) safety of products and processes; and (iii) consumer interest.

8. In case there is no agreement on the incorporation of the above suggestions in the draft code of conduct, the following options may be considered in order to conclude the negotiations:

(a) The possibility of adopting a set of agreed rules and principles consisting of those provisions of the draft code relating to the conduct of parties to transfer of technology transactions (in particular, chaps. 4 and 5);

(b) A code consisting of the agreed provisions of the draft code of conduct;

(c) Further attempts to resolve the outstanding issues in the draft code resulting in the adoption of the code as presently structured.

9. In chapter 3, consideration should be given to a more precise reflection of the reference to international law in the text.

10. In the search for a solution to the issues outstanding in chapter 4, a distinction should be made between the chapeau and the individual provisions: (a) with regard to the chapeau, a reference to the restrictive business practices code should be a useful basis, taking into account the specificities of the transfer of technology transactions. Unlike other chapters of the code, chapter 4 need not apply to conduct between parent and subsidiary; (b) the 14 provisions on individual practices should be maintained for further consideration, taking into account recent trends relating to the greater use of the rule of reason as a yardstick in the treatment of individual restrictive practices. While the competition test could provide a substantial basis for dealing with the overall problems in chapter 4, it is recognized that the development test has a role to play in national laws, especially as regards the control of other practices that may affect the technological development of developing countries.

11. In chapter 5, the concept of confidentiality contained in the proposal by the President of the Conference appears to be appropriate.

12. With regard to applicable law in chapter 9, the following options should be considered: (a) the omission of the provision on applicable law (9.1); (b) the concept contained in the proposal by the President of the Conference could be retained; (c) further consideration could be given to the proposals by the regional groups.

13. If the approaches for further consideration of the code suggested above were to be retained by Governments, there might be a need for a preparatory process before resuming negotiations on the code.

14. To that end, it is recommended that the UNCTAD secretariat undertake further studies on some of the specific issues mentioned above in order to facilitate their consideration by Governments. Such studies should, inter alia, examine the recent changes in competition law and policy and their relevance to the restrictive practices covered by the draft code and the modalities of licensing and transfer of technology in the areas of biotechnology and computer technology.